1950

# N. B. Rogers Helman v. W. C. Patterson, Asa Lloyd Heflin, Melvin C. Bowles, First Doe, Second Doe, Third Doe, and Fourth Doe : Brief of Appellant

Utah Supreme Court



Emerson C. Willey; Wesley G. Howell; Attorneys for Defendant and Appellants;

Case No. 7552

# IN THE SUPREME COURT
# of the
# STATE OF UTAH

N. B. ROGERS HELMAN, formerly known and being one and the same person as N. B. Rogers,

*Plaintiff and Respondent,*

— vs. —

W. C. PATERSON, ASA LLOYD HEFLIN, MELVIN C. BOWLES, FIRST DOE, SECOND DOE, THIRD DOE, and FOURTH DOE,

*Defendants and Appellants.*



## BRIEF OF APPELLANT

EMERSON C. WILLEY
WESLEY G. HOWELL
Suite 1003-07 Boston Building,
Salt Lake City, Utah
*Attorneys for Defendant & Appellants*

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## BRIEF OF APPELLANT

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## STATEMENT OF FACTS

Plaintiff commenced this proceeding to quiet title to an undivided one-half interest in certain unpatented mining claims situate in San Juan County, Utah, and more particularly described in the Plaintiff's Complaint. The Complaint further alleged that the Defendant has

entered upon said mining claims, mined ore therefrom, and the prayer of the Complaint, inter alia, asks for injunctive relief. However, no damages were asked for, and no restraining order was ever issued and no further reference will be made to this phase of the case. (R. 37-58)

The defendant, W. C. Paterson, filed an answer in which he admitted that said mining claims were recorded as alleged, that he claimed an interest in said mining claims adverse to the claims of the Plaintiff and denied each and every other allegation of the Complaint. The Defendant's answer alleged as an affirmative defense and cross-complaint that he was the sole owner of the legal and possessary title to said mining claims and entitled to the possession thereof, subject only to a lease-hold interest of the Defendants, Heflin and Bowles. (R. 32-34)

The answer further alleged that on May 21, 1949, the Defendant entered into an option agreement with the Plaintiff under the terms of which the Defendant offered to sell some of the mining claims described in the Plaintiff's Complaint, but said agreement was never exercised, consumated or fulfilled, and that on October 4, 1949, the Plaintiff and the Defendant entered into an agreement under the terms of which the Plaintiff agreed to buy and the Defendant agreed to sell all of the mining claims described in the Complaint for the sum of $25,000.00, that the Plaintiff failed to make payments as provided in said agreement and the Defendant has cancelled said

agreement, and by reason of these agreements, the Plaintiff is estopped to deny title of the Defendant to said mining claims. The District Court resolved this issue in favor of the Plantiff and since no error is predicated upon the Court's decision in this regard, no further reference will be made to this pleaded estoppel. (R. 32-34)

The prayer of the Defendant's answer and cross-complaint prayed that title to the said mining claims be quieted in the Defendant, that the claims of the Plaintiff be declared to be invalid and of no force and effect whatever, and that Plaintiff be restrained and enjoined from asserting any title to said mining claims and for such further relief as is meet and equitable in the premises. (R. 32-34)

The District Court entered its Findings of Fact, Conclusions of Law and Decree quieting title in the Plaintiff to an undivided one-half interest in said mining claims. (R. 14-19) Neither the District Court's Findings of Fact nor Conclusions of Law nor Decree makes any reference whatsoever to the title to the undivided one-half interest which was not quieted in the Plaintiff.

The Defendant filed a timely motion to amend the Court's Findings of Fact, Conclusions of Law and Decree which, so far as they are pertinent to this appeal, requested the Court to modify paragraph 3 of said Findings of Fact by setting forth therein that the Defendant had not only rendered services in connection with the acquisition of said mining claims, but that said Defend-

ant had paid out of his own resources toward the purchase price and development of said mining claims the sum of $16,000.00, and had made, executed and delivered to the seller, Howard Balsley, his note in the amount of $2,250.00, and secured said note with a good and sufficient mortgage upon said mining claims and that the Plaintiff had contributed only $4,000.00 toward the purchase price and improvements of said mining claims. That their contributions were not joint and equal and that in equity and good conscience, the right, title and interest of the Plaintiff and of the Defendant, Paterson, should be quieted in each in proportion to their respective contributions toward the purchase price and costs of development of said mining claims, or in the alternative, to quiet title to an undivided one-half interest in the Plaintiff and that Plaintiff pay and contribute to the Defendant, Paterson, toward the cost of purchase and development of said mining claims an amount which would make their respective contributions equal. The motion further moved the Court to adjust all equities between the parties to the action and to determine the status of all controversial claims to or interest in the properties which are shown to exist in the evidence, regardless of the character. (R. 20-21). This motion was denied. (R. 10)

At the trial of the case, it was stipulated and agreed by the Plaintiff and the Defendant, Paterson, that the lease-hold interest of the Defendants Asa Lloyd Heflin and Melvin C. Bowles would not be affected by the out-

come of this litigation and the decree entered by Judge Keller so recites. Therefore no further mention will be made to the interest of said Defendants. (Tr. 3)

During the fall of 1947, Plaintiff and Defendant entered into an agreement whereby Plaintiff was to furnish services in the procurement of capital and Defendant was to furnish services in finding, selecting and acquiring certain mining claims to be purchased and developed through the capital furnished by Plaintiff. (R. 17; Tr. 5-6)

In accordance with said agreement, the Plaintiff procured investors in the vicinity of Kansas City and Topeka, Kansas, and delivered to the Defendant the sum of $39,550.00; that the Defendant expended $37,310.-00 for the purchase of certain mining claims situate in the State of Colorado and 11 mining claims situate near Moab, Utah, none of which are involved in this action, and for expenses incurred in connection with the acquisition and work done on these claims. This evidence is uncontradicted and the details of these expenditures are set out in the Defendant's Exhibit B.

In accordance with said agreement, on June 1, 1948, the Defendant in his individual capacity and as agent for the Plaintiff entered into an agreement with H. W. Balsley under the terms of which Mr. Balsley agreed to sell and the Defendant agreed to buy the mining claims described in Plaintiff's Complaint for $20,000.00 payable according to the terms and provisions of said agreement. (Defendant's Exhibit C).

Payments were made from time to time to Mr. Balsley and as of July 14, 1949, there had been paid toward the purchase price of said mining claims the sum of $15,500.00. On June 15, 1949, the Defendant paid an additional $2,250.00 and at the same time made, executed and delivered to Mr. Balsley his promissory note in the amount of $2,250.00 and secured said note with a mortgage upon said mining claims, so that after the June 15, 1949 payment, the Defendant had paid $17,750.00 in cash and had delivered a note and mortgage to secure the balance of the purchase price to-wit: $2,250.00. Of the $17,750.00 so paid, the Defendant paid out of his personal funds $13,750.00 and $4,000.00 out of a joint fund owned by the Plaintiff and the Defendant in equal shares so that the actual contribution of the Defendant toward the purchase price of said claims was $15,750.00 and the contribution of the Plaintiff toward the purchase of said mining claims was $2,000.00. These facts are not contradicted and the amount of the various payments made by the Defendant to Mr. Balsley and the source of such funds are set out in Defendant's Exhibit H.

## STATEMENT OF POINTS

1. The District Court erred in the following particulars to-wit:

(a) In denying the Defendant's motion to amend its Findings of Fact, Conclusions of Law and Decree and

refusing to determine the Defendant's interest in said mining claims.

(b) In denying the Defendant's motion to amend its Findings of Fact, Conclusions of Law and refusing to determine the amount of the contributions of the Plaintiff and the Defendant toward the purchase price and costs of improving said mining claims.

(c) In denying the Defendant's motion to amend its Findings of Fact and Conclusions of Law and refusing either to quiet title to an undivided one-half interest in the Plaintiff and an undivided one-half interest in the Defendant and to impose a lien upon said mining claims to secure the payment of contribution by the Plaintiff to the Defendant for such an amount as would make their contributions equal, or in the alternative, to quiet the title in the parties in undivided fractional interests proportioned upon their respective contributions in the acquisition and development of the claims.

(d) In refusing to adjudicate the relative rights, obligations and liabilities of the Plaintiff in regard to the note and mortgage against said mining claims in favor of said H. W. Balsley.

(e) In refusing to require the Plaintiff to do equity, and in refusing to make a complete disposition of all the issues raised by the Complaint, Answer, and Cross-Complaint.

2. The District Court erred in denying the Defendant's motion to amend its Findings of Fact by

striking from paragraph 2 of said Findings of Fact the following:

> "And that the other half would be finally transferred to said Corporation and that the Plaintiff and the Defendant W. C. Paterson would receive stock for their transfer and other compensation for their services, and that the Plaintiff and the Defendant W. C. Paterson would each own a one-fourth interest in such property so acquired."

## ARGUMENT

A COURT OF EQUITY SHOULD NOT ENTER AN INCOMPLETE DECREE, BUT SHOULD DECIDE ALL ISSUES INVOLVED IN THE CONTROVERSY AND AWARD COMPLETE RELIEF AND ACCOMPLISH FULL JUSTICE BETWEEN THE PARTIES TO PREVENT FURTHER LITIGATION.

*Ludlow, et al, vs. Colorado Animal By-Products Company,* Utah 1943 104 Utah 121 137 P. (2), 347.

*Kinsman vs. Utah Gas and Coke Company,* Utah, 1918 53 Utah 10: 177 P. 419.

*Floor vs. Johnson,* Utah, 1948, not reported 199 P. (2) 547.

*Stromerson vs. Averill,* California, 1942, 121 P. (2) 826; 126 P. (2) 392; 141 P. (2) 732; 133 P. (2) 617.

*Hultz vs. Taylor,* Kansas 1947, 181 P. (2) 515.

*Murray Hotel Company vs. Golding et al,* New Mexico, 1950, 216 P. (2) 364.

*Bacon vs. Wahrhaftig,* California, 1950, 218 P. (2) 144.

*LaJolla Casa Demanana vs. Hopkins,* California, 1950, 219 P. (2) 871.

*Colombia Trust Company vs. Farmers & Merchants Bank,* Utah, 1933, 82 Utah 117 22 P. (2) 164.

*Conley vs. Sharpe,* California, 1943, 136 P. (2) 376.

*Strausburg vs. Connor,* California, 1950, 215 P. (2) 509.

*Miller vs. Gilleland,* Colorado, 1939, 95 P. (2) 815.

*Utah Rules of Civil Procedure,* Rule 54(c) 1.

Rule 54(c) provides:

> "Generally. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves."

In *Ludlow vs. Colorado Animal By-Products Company,* supra, suit was brought to enjoin the construction and operation of the Defendant's Rendering Plant upon the ground that it consituted a nuisance. The District Court found that the Plant constituted a nuisance, but in view of the Plaintiff's delay in seeking relief, no injunc-

tion would be granted, but that the Plaintiffs would be awarded damages for the depreciation of the value of their property by reason of the maintenance of the nuisance. Thereafter, a supplemental Complaint was filed in which parties, as to whom the action had previously been dismissed, were joined as Plaintiffs. Complaint was made that the supplemental pleading is an action in which there was a misjoinder of parties Plaintiff, each having a separate cause of action for damages.

The Supreme Court held that it was not error to permit the supplemental pleadings, and in its opinion said:

> "In an equity action where the prayer is for both specific and general relief, such as for an injunction and 'any further or other relief which the Court shall deem appropriate in the premises,' having once acquired jurisdiction of the parties and the subject matter, the Court will retain that jurisdiction until full justice has been achieved between the parties, even if equitable relief is denied. This is especially true in this state where we have only one form of civil action, and various kinds of relief can be administered in the same action."

In the *Floor vs. Johnson,* supra, suit was brought by certain stockholders of the New Quincy Mining Company to cancel two hundred thousand shares of stock which had been issued by the Company. By amendment, the respondent asked for additional relief in the ouster of the Directors who had been elected by stockholders

including those representing the two hundred thousand shares in question.

The Court held that the two hundred thousand shares of stock had been fraudulently issued, and decreed that the Directors elected by virtue of the use of that stock were holding office illegally. Complaint was made by the Defendants, that the Court had no authority to declare the Directors who had fraudulently issued the stock to be illegally elected. In its opinion the Court said:

> "It would be a peculiar kind of justice if the equity court were only able to say the stock was fraudulently issued and order its cancellation, and then be unable to give the complete relief which would naturally follow, of declaring the legality or illegality of action pursuant to the fraudulent issue. Schwab vs. Frisco Mining Milling Co., supra, and cases cited therein. The ouster of the Johnson group and declaration that the Floor group members were elected is not the paramount relief sought. It is only incidental to the cancellation of stock fraudulently issued, and outstanding. Consolidated Wagon & Machine Co. v. Kay et al., 81 Utah 595, 21 P. 2d 836; Trenchard v. Reay, 70 Utah 19, 257 P. 1046; Kinsman v. Utah Gas & Coke Co., 53 Utah 10, 177 P. 418. There was no error in overruling the demurrers and objections made to inclusion of the additional matters in the prayer for relief."

In *Kinsman vs. The Utah Gas and Coke Company,* supra, the Court following the same rule, said:

> "The Plaintiffs alleged the depreciation of both the rental and market value of their homes,

and the court found that such allegations were supported by the testimony. Plaintiffs prayed for both specific and general relief, and a court of equity, having acquired jurisdiction of the parties and the subject-matter, will retain that jurisdiction until justice has been done between the parties.

"In addition, in this state there is but one form of civil action for the enforcement or protection of private rights and for the redress or prevention of private wrongs, and law and equity may be administered in the same action. Such are the provisions of both the Constitution and the Code. To dismiss this action, and send the Plaintiffs to their actions at law, would necessitate the filing of new complaints based upon and containing the same facts as alleged in the complaint here, and to be presented to the same court, invested with like powers. Such proceedings would defeat the very object of the Constitutional and statutory provisions providing for only one form of civil action, and empowering the court to administer both equity and legal relief in the same action."

*Stromerson v. Averill,* supra, is a most interesting and enlightening case. Four times the Superior Court of California entered a judgment and an appeal was taken, and four times the Supreme Court of California held that the Superior Court had not determined all of the issues involved in the case and had not required the Defendant to do equity.

In 1936, the Plaintiff entered into a contract with Miller and Lux, Inc. to purchase 562 acres of land. Pay-

ments were to be made as set out in the contract over a period of nine years. The down payment was made through a loan obtained by the Defendant, most of which was repaid out of the operations of the farm. The farm operations were financed by advances from the San Joaquin Cotton Oil Company, secured by chattel mortgages on the crops. Such notes and mortgages were endorsed by the Defendant. Such advances were repaid chiefly by returns of the crops raised. Three bank accounts were maintained and the advances raised from the San Joaquin Cotton Oil Company were paid into such of these accounts as the circumstances required. Plaintiff brought an action to quiet title. Defendant answered alleging ownership.

The Superior Court of California found that the Plaintiff was working as agent of the Defendant and quieted title to said real estate in the Defendant. Upon appeal the Supreme Court of California reversed the Superior Court for failing to determine all of the issues raised by the pleadings and in failing to require the Defendant to do equity. In its opinion 133 P. (2) 625 the Court said:

> "We agree with Plaintiffs that the Court has failed to require Defendant to do equity in the case and further proceedings should be had. The nature of the action has been heretofore discussed. Such cases as this should not be tried piecemeal. The entire issue between the parties should be adjusted. As it stands, Stromerson assumed personal liability under the contract to purchase the

property. If Defendant does not discharge the obligation, it is shouldered upon Stromerson, Defendant's agent. Further, it appears that there may be outstanding notes and chattel mortgages upon which Stromerson is liable in connection with his conduct as an agent for Defendant, and the court made no finding with respect to the financial obligations, if any, existing between the parties. As we have seen, the decree determines that the contract and property belong to Defendant and that Stromerson has no interest therein. It rests upon theory of agency and a constructive or resulting trust arising therefrom. There necessarily was implicit in the agency agreement an agreement upon the part of the Defendant, principal to reimburse the agent Stromerson for any detriment suffered by him in carrying out his duties. It is the general rule that unless otherwise agreed, the principal owes a duty to his agent to reimburse him for or exonerate him from authorized payments by the agent on behalf of the principal, and payments and obligations under contracts which the agent is authorized to make himself liable. Schwarting v. Artle 40 Cal. App. 2d 433, 105 P. 2d 380; Dolman Co. Inc. v. Rubber Corporation of America, 109 Cal. App. 353, 293 P. 129; Restatement Agency 439. It does not appear that there was any agreement between defendant and Stromerson that the former was not to exonerate the latter from or reimburse him for obligations incurred by the latter on behalf of the former, but on the contrary the circumstances point to an implied agreement that such exoneration and reimbursement would be made. Also, where the resulting or constructive trustee takes title with the consent of the beneficiary he is entitled to reimbursement. See Watson v. Poore, supra;

Robles v. Clarke, 25 Cal. 317; Woodard v. Wright, 82 Cal. 202, 22 P. 1118; Milloglav v. Zacharias, 33 Cal. App. 561, 165 P. 977. The conduct of Stromerson in giving his personal credit on the contract and the crop mortgages was at the direction of the Defendant, his principal. He may also have rendered services and made expenditures for which he has not been reimbursed. The trial court should therefore take an accounting, ascertain the nature and extent of the outstanding obligations which Stromerson has assumed, the value of any services he has rendered and the amount of any expenditures he has made in the course of his duties as agent for Defendant including the contract of purchase, and make such order in the premises as a condition to Defendant's recovery as will protect Plaintiffs from liability under those obligations and reimburse them for such services and expenditures if any.

"The judgment is reversed and the cause remanded to the trial court to take such further proceedings as may be necessary to determine what if any obligations Plaintiffs or either of them have assumed as agent or trustee for Defendant, and any amounts due from Defendant to Plaintiffs or either of them arising out of the transaction in relation to the acquisition, development or operation of the property involved in this action, and render judgment accordingly, making any amount due Plaintiffs a lien upon Defendant's interest in said property, and providing for the release, discharge and exoneration of Plaintiffs and each of them from any obligations in connection with the purchase, development or operation of said property, and thereupon make a decree quieting Defendant's title to said prop-

erty subject to the payment of such lien and the discharge of said obligations by Defendant."

See also 141 P. (2) 737 where the California Court again reversed the Superior Court for failure to determine all of the issues.

A CO-TENANT WHO PAYS THE TAXES AGAINST THE COMMON ESTATE OR MAKES SUBSTANTIAL IMPROVEMENTS IN THE COMMON ESTATE, OR DISCHARGES A PRIOR AND SUPERIOR ENCUMBRANCE IS ENTITLED TO CONTRIBUTION FROM THE OTHER CO-TENANTS, AND TO A LIEN AGAINST THE COMMON ESTATE TO SECURE SUCH CONTRIBUTIONS.

*Hultz v. Taylor,* Kansas 1947, 181 P. (2) 515; 199 P. (2) 529; 215 P. (2) 145

*Conley v. Sharpe,* California, 1943, 136 P. (2) 376

*Strausburg v. Connor,* California, 1950, 215 P. (2) 509

In *Hultz v. Taylor,* 181 P. (2) 515, the Plaintiff commenced an action to require the Defendant to convey to the Plaintiff 15 acres of a 30 acre tract of land. The Defendant answered that he was the owner of all said 30 acres and that he was in possession thereof. The trial court held that the Plaintiff had not sustained the burden of proof to his claim of ownership and that the Defendant had not sustained the burden of proof to his claim of ownership. The Court further held that if a request for partition was made by either party, the property would be partitioned and the proceedings of the sale distributed

according to the contributions of the parties, to the costs, redemption, taxes, interest and incidental expenses. No request for partition was made and the court entered judgment against the Plaintiff for costs. Upon appeal the Supreme Court of Kansas said:

> "From the foregoing facts if will be seen that the legal rights of the parties to the action have been adjudged to remain in complicated, chaotic confusion. The Plaintiffs do not know whether they have right to remain in possession of the house; the Defendant, Hugh Taylor, does not know whether he has title to all the land as against the claims of the Plaintiffs; no one knows who should pay taxes on all or any part of the property. The Plaintiffs do not know whether Hugh Taylor owes them money; whether it is a lien upon the land, or whether they can hereafter obtain a judgment for the correct amount. Thus, the means to the legal end ended meaningless. Moreover, serious legal complications may arise if the respective parties attempt to seek an adjudication of their respective rights in subsequent independent litigation. The law relative to avoiding a multiplicity of actions and res judicata may plague the parties in any actions which they may see fit to bring in furtherance of the establishment of their legal rights. We do not pass upon such questions because they are not before us for decision in this appeal.
>
> "This court is well aware that the trial court was confronted with perplexing problems concerning the application of the statute of frauds, the effect of part performance, possession, and partial payment thereunder, the sufficiency of writ-

ten memoranda, the limitations of the pleadings, the possible insufficiency of the testimony, and other complications. Nevertheless, we are convinced that the result reached by the trial court was wrong. The applicable and controlling rule is that equity will not enter a partial or incomplete decree. From 19 Am. Jur. 126-127 the following is quoted:

" 'The rule is that equity will not enter a partial or incomplete decree. Having taken cognizance of a cause for any purpose, a court of equity will ordinarily retain jurisdiction for all purposes; decide all issues which are involved by the subject matter of the dispute between the litigants; award relief which is complete and finally disposes of litigation so as to make performance of the court's decree perfectly safe to those who may be compelled to obey it; accomplish full justice between the parties litigant; and prevent future litigation.'

"Later in the text will be found the following from Section 409, page 281:

" 'It is a fundamental principle of chancery courts finally to dispose of litigation, making as complete a decision on all the points embraced in a cause as the nature of the case will admit, so to preclude not only all further litigations between the same parties, but also the possibility that the parties may at any future period be disturbed or harassed by the claim of any other person, as well as the possibility of any danger of injustice being done to other persons who are not before the court in the present proceedings. Acting pursuant to this principle, courts of equity require not only that the pleadings shall so present all the matters in controversy that they may be properly adjudi-

cated, but also, that so far as practicable, all persons having any interest in the subject matter of controversy be made parties to the end that their rights may be ascertained.'

"The text continues:

"'* * * A final decree which undertakes to dispose of the whole cause should include a disposition of issues which are raised by a cross bill and answer as well as those which are presented by the pleadings in chief.

"'Where several parties, being all those interested in a legal controversy, are before the court asking that their respective rights be determined, and such rights are capable of ascertainment, a decree, based upon indefinite findings, which does not determine the essential rights of all the parties and leaves a material part of the controversy undetermined, is insufficient and will not be upheld on appeal.' (S. 409, p. 282.)

"Equity maxims support the rule. One of them is that 'Equity delights to do justice and not by halves.' Another is that 'equity will not suffer a wrong to be without a remedy.' See C.J.S., Equity, 104 and 105, p. 506. The rule which we think controlling this case is stated and will be found supported by nearly four pages of citations in 30 C.J.S., Equity, 67, beginning at page 414."

When the case was again before the Superior Court, the Court misinterpreted the opinion of the Supreme Court of Kansas and ordered the 30 acres to be appraised and if neither party elected to take it at the appraised

value, it should be sold and the proceeds paid as set out in the opinion.

Upon appeal the Supreme Court of Kansas held that since there was no dispute as to the title to the North 15 acres, it was error to order the sale of the entire 30 acre tract. See 199 P. (2) 529.

Again when the case was remanded to the Superior Court, that Court drew the following conclusions:

> III. "In view, however, of the finding and judgment of the Supreme Court as expressed in next to the last paragraph of its opinion in the case of Hultz v. Taylor, 166 Kan. 55 (199 P. 2d 529), that the defendant Taylor is the owner of the North Fifteen Acres of the Thirty Acre Tract in question, and that the plaintiff, Hultz, has no interest therein because of the allegations in his petition, equity, under the Conclusion of Fact in this case, and the Mandate of the Supreme Court, will award the title to the South Fifteen Acres of the Thirty Acre Tract to the parties who contributed to the redemption of the whole Thirty Acre Tract."
>
> IV. "Equity will, in this action, decree a division of the South Fifteen Acres of the Thirty Acre Tract among the parties who contributed to the redemption thereof, from the foreclosure sale, if either of the parties move for such a division within sixty days from the entry of the judgment herein."

Again the case was appealed to the Supreme Court, and that Court referring to the conclusions of the Court set out above, said:

> "We set aside conclusions of law Nos. III and IV as not being in accord with the trial court's judgment.
>
> "In lief thereof the court should find the fractional share of the thirty-acre tract of land owned by Caleb Hultz and the fractional share owned by Hugh Taylor. Whether that is done by permitting and requiring Hultz to pay Taylor a sum which the court shall find will make each of the parties the owner of an undivided one-half of the land, or whether such respective shares are determined by the amount each has paid to redeem the land plus taxes and other items, if any, which should be taken into account, is for the trial court to determine under all the facts and circumstances in the case."

In *Conley v. Sharpe*, supra, Plaintiffs commenced an action to set aside certain deeds and quiet title to the real estate in question in Plaintiffs. The Defendant's answer set up an undivided one-half interest in Defendant. The District Court held that the Plaintiffs and the Defendant owned the real estate as tenants in common, and found that the Defendant had made certain payments of principal and interest due on a mortgage, had paid the taxes on the property, and had paid for material and labor repairing and preserving said real property. Upon appeal, addressing itself to the question of whether a

co-tenant should be reimbursed for such expenditures, the Appellate Court said:

> "The rule is that when one tenant in common has paid a debt or obligation for the benefit of the joint property, or has discharged a lien or assessment imposed upon it as a common burden, he is entitled as a matter of right to have his co-tenant, who has received the benefit of it, refund to him his proportionate share of the amount paid. As a matter of fact this property was joint property when these taxes and other charges against it were paid by plaintiff. In proportion to their interest all tenants in common are in duty bound to pay taxes, which in this state are a lien upon real property and their nonpayment subjects the land to sale in satisfaction of them. Either of the co-tenants may pay the taxes assessed against the whole estate, and such payment discharges the lien imposed upon the common interest, and no matter whether one tenant paying it intended the payment to be for his own benefit or not, such payment in fact and in law essentially insures to the benefit of the other co-tenants. It discharges the lien against the common estate for the common benefit, independent of any intention of the co-tenant paying it, and as all other co-tenants are entitled to the benefit of such payment, it is only right that they should refund to the one making it their proportion of the amount he has paid. Starks v. Kirchgarber, 134 Mo. App. 211, 113 S.W. 1149. This rule equally applies to expenditures other than taxes made for the common benefit." Willmon v. Koyer, 168 Cal. 369, 374, 143 P. 694, 696, L.R.A. 1915 B, 961. See also, Rich v. Smith, 26 Cal. App. 775, 784, 148 P. 545; Jamison v. Cotton, 136 Cal. App. 127, 129, 28 P. 2d 39.

> Respondents admit they have "been unable to find any authority holding the co-tenant personally liable for the expenses incurred by the other co-tenant and, therefore, (have) no objection to the modification of the judgment entered in the above-entitled action so that the judgment only constitute a lien on the real property and not a personal judgment against the plaintiffs and cross-defendants."

In the *Strausburg v. Connor,* supra, action was brought to quiet title to certain real estate. The court found that the Plaintiff was the owner of an undivided three-fourths interest and the Defendant the owner of an undivided one-fourth interest and the court also found that the Defendant owed to Strausburg, one of the Plaintiffs, a balance due on the purchase price of the Defendant's one-fourth interest and entered a judgment accordingly. Referring to this phase of the case, the Appellate Court held:

> "Little need be said about the appeal from the part of the judgment wherein it is decreed that respondent Mike Strausburg recover of appellant the sum of $20. This was, upon sufficient evidence, held by the court to have been the unpaid part of the purchase price which appellant had agreed to pay for the Strausburg interest. Appellant by appropriate affirmative allegations had sought a decree quieting her title against the Strausburgs, basing her claim entirely on their deed to her. Therefore the trial court was justified, while granting her the equitable relief she asked in ordering her to do equity by paying her debt."

It will be recalled that the Plaintiff commenced this action to quiet title to a one-half undivided interest in the mining claims in question; that the Defandant's answer alleged that he owned the mining claims, and was entitled to the possession thereof; that during the trial the evidence showed conclusively that the Defendant's contribution toward the purchase price of said mining claims was $15,750.00, and that the Plaintiff's contribution was $2,000.00; that there is now a mortgage against said mining claims in favor of W. H. Balsley given to secure the balance of the purchase price due. It will also be recalled that the Defendant's motion to amend the Findings of Fact, Conclusions of Law and Decree requested the court to quiet title in the Plaintiff and Defendant according to their respective contributions, or to quiet title to an undivided one-half interest in the Plaintiff and impose a lien on said mining claims in favor of the Defendant to secure the amount owing from Plaintiff to Defendant; and that the court determine and adjust all equities between the parties and determine all controversial claims to the properties, and that said motion was denied.

We respectfully submit that under the authorities above cited, the District Court erred in failing to determine what right, title and interest the Defendant had in said mining claims; in failing to determine the respective contributions toward the purchase price and improvements of the Plaintiff and the Defendant, and in failing to impose a lien in favor of Defendant to secure the amount of the contribution due from Plaintiff, and in

failing to determine whether the Plaintiff and Defendant, or both of them, should pay to H. W. Balsley the balance due on the present existing note and mortgage.

The absolute necessity of the Court to completely determine all of the issues in the case becomes of the greatest importance, if it is kept in mind that the Court's failure to decide the issues involved in the case preclude all parties from thereafter predicating a cause of action upon an undecided issue because the judgment is res adjudicata, not only as to the issues determined by the Court, but as to all issues which should have been determined by the Court. The rule is thus stated in 44 American Jurisprudence at Page 95:

> "Generally, where jurisdictional requisites are satisfied, the judgment or decree is conclusive as to the rights of the parties and their privies with respect to all matters in issue which were or should have been determined, in the action or proceeding, and, under the rule of res adjudicata, bars subsequent litigation between such persons based on the same claim or cause of action. To a determination of all interests, in addition to jurisdiction of the parties and of the subject matter of the action, it is necessary to the validity and binding effect of a judgment or decree that the court should have had jurisdiction of the question which it assumes to decide, or the particular remedy or relief which it assumes to grant, but if all the parties are brought before the court that can be brought before it, and it acts properly according to the rights that appear, there being no fraud or collusion, its decision is conclusive as to to the state of the title."

See also, *Hultz v. Taylor,* supra, and *Conley v. Sharpe,* supra, when the court recognized the rule that one co-tenant cannot recover a personal judgment against the other tenant for taxes paid, improvements made or discharging a superior encumbrance. Unless this case is reversed and plaintiff is required to do equity and a lien impressed to protect the Defendant, the Defendant may be without a remedy and Plaintiff unjustly enriched.

See also *Logan City v. Utah Power and Light Company,* 16 P. (2) 1097, 1101 where this Court held that a judgment is conclusive as to all matters which might have been interposed as a defense. An affirmance of the District Court's decision would prevent the Defendant from seeking relief against the Plaintiff for the amount owing from Plaintiff to Defendant in another action.

The necessity and advisability of the Court to completely decide all of the issues in this case and to enter a Decree which will fully and completely protect all of the rights and equities of all of the parties concerned is unmistakably demonstrated by the fact that on the 8th of August, 1950, there was recorded in the office of the San Juan County Recorder a deed conveying all of the Plaintiff's interests in the mining claims described in the Plaintiff's Complaint to Alvin J. Kinder.

Referring now to the Defendant's second assignment of error, namely, that the Court's Findings of Fact should not have included a finding that the Defendant had agreed to transfer his interest in said mining claims to a corporation to be organized, we desire to point out

to the Court that such a finding is wholly without any of the issues raised by the pleadings in this case, and wholly unnecessary to an adjudication of the respective rights of the Plaintiff and the Defendant in said mining claims, and should be deleted from the Court's Findings of Fact.

We respectfully submit that the decision of the District Court should be reversed and remanded to the District Court with instructions to determine all of the issues raised by the pleadings and to enter Findings of Fact, Conclusions of Law and Decree adjudicating the rights of the Defendant to an undivided one-half interest in said mining claims; determining the contributions of the Plantiff and the Defendant toward the purchase price of said mining claims and the improvements made thereon, and impressing a lien in favor of the Defendant to secure the indebtedness owing to him from the Plaintiff and to determine the respective rights, liabilities and obligations of the Plaintiff and the Defendant in regards to the mortgage indebtedness in favor of H. W. Balsley.

Respectfully submitted,

EMERSON C. WILLEY
WESLEY G. HOWELL
Suite 1003-07 Boston Building,
Salt Lake City, Utah
*Attorneys for Defendant & Appellants*